

Testimony on HB 421 – Harold Blattie, Executive Director – Montana Association of Counties

What would the founders of our country say?

I think they would say vote "NO".

Why? I think they would say "Vote No" because of all of the freedoms granted in this country. One of the most important, if not perhaps the most important is for each and every citizen to give voice to their beliefs and convictions. Any effort to stifle a single voice is wrong and an anathema to the democracy so many have fought and died for.

They would tell you that ^{Hundreds & probably} ~~thousands upon~~ thousands of Montanans will be disenfranchised if this bill passes. Those Montanans will not be able to participate in our political process. They would tell you that the solutions to the perceived problems lack balance. The very title of the bill "The Montana Clean Government Act" implies that Montana Government is dirty. With all due respect, ^{- to the supporters} on behalf of Montana's elected county officials, I take exception to that implication. ^{Proponents have not cited a single specific example in Montana} ~~You have not~~ Montana already has strong sunshine laws which are invaluable in preserving transparency in the political process. Montana already has strong bidding and procurement laws that require fair and open bidding processes. ^{for contracts in excess of \$100,000} We can not ^{of legislation determined thresholds} support a law that will create a Montana where we have two classes of citizens; those who can fully participate in the political process and those that have second class citizen status and can not.

Some specifics about the bill:

Section 3 , Page 2, Lines 7-8: Note the dollar amounts specified. How do you square those against other sections of current law? For Example:

7-8-2202. Appraisal required for certain purchases of real property or conservation easements. (1) Unless otherwise provided by law, a county may not purchase real property in an amount in excess of \$20,000 or a conservation easement using public funds in an amount in

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excess of \$80,000 unless the value of the property or conservation easement has been previously estimated by:

(a) a disinterested certified general real estate appraiser selected by the county commission, county attorney, and landowner; or

(b) three disinterested citizens of the county appointed by the district judge.

(2) A county may not pay more than the appraised value for the real property or conservation easement.

7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304 and Title 18, chapter 2, part 5, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of \$50,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Subject to 7-5-2309 and except as provided in Title 18, chapter 2, part 5, every contract subject to bidding must be let to the lowest responsible bidder.

7-5-2303. Use of public auction to make purchase. (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than \$60,000.

(2) Compliance with the provisions of this section is considered as meeting the requirements of 7-5-2301.

7-5-2304. Exemptions from competitive bidding requirements. The provisions of 7-5-2301 do not apply to contracts for:

(1) **public printing entered into in accordance with the provisions of part 24; and**

(2) **purchases that, in the opinion of the governing body, are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, or riot or insurrection; for the immediate preservation of order or the public health; for the restoration of a condition of usefulness that has been destroyed by accident, wear, tear, or mischief; or for the relief of a stricken community overtaken by calamity.**

7-5-2315. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

18-4-124. Local government adoption of procurement provisions – alternative project delivery contracts. (1) A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

(2) A governing body, as defined in 18-2-501, may adopt the provisions of Title 18, chapter 2, part 5, and use an alternative project delivery contract.

18-8-201. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements **for architectural, engineering, and land surveying services** and negotiate contracts for such professional services on the basis of **demonstrated competence and qualifications** for the type of professional services required and at fair and reasonable prices.

18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) **The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.**

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

The last thing we need is more specific dollar amounts to keep track of.

I would urge you to look closely at the definition of a No-Bid Contract in Section 3, Page 2, Lines 20-24. Note the applicability that at least three bids must be received prior to awarding the contract. In many, many call for bids issued by counties, there are not three bids received. Local officials could not avoid running afoul of the provisions of this bill and just because they did not receive three bids for a project, would find themselves COMPLETELY disenfranchised in the political process.

I would specifically call your attention to Section 8 of HB 421 which makes a violation of the provisions of the bill an act of Official Misconduct. Are you aware that 45-7-401(4) REQUIRES IMMEDIATE FORFEITURE OF THEIR OFFICE upon conviction of Official Misconduct. Section 45-7-401 requires a demonstration of state of mind, i.e purposefully, knowingly, negligently. Section 8 does not require that standard to be demonstrated. It creates an absolute liability so ANY person who unknowingly, non-purposefully or non-negligently violates the provisions of this bill would forfeit their office.

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

I would have to admit a certain amount of benefit might be derived from passage of this bill. When a person holding a non-bid contract would receive the hundreds upon hundreds of phone solicitations during the campaign season for contributions to candidates and supporters of ballot measures, they could simply say: "SORRY – I am prohibited from making such contributions"

We do not want a Montana where sons and daughters who are teachers, firemen, police officers, state and county workers are not allowed to voice their opinions and express their views. None of us always agree with each and every one of their voices but I, and every opponent believes it is worth the fight to maintain their right for that voice. I believe our founders would say it is worth the fight.

I-156 - SOS website
Google - Clean Gas Act or Initiative
Google - House Rule